

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

JOINT SUBMISSION OF STIPULATED FACTS

The State of Texas, the United States, the State of New Mexico, and the State of Colorado jointly stipulate to the following facts for the purposes of the trial in this matter:

1. The Rio Grande is an interstate and international river that originates in Colorado, flows in a southerly direction into and through New Mexico and into Texas, and then to the Gulf of Mexico.
2. The Rio Grande forms the international boundary between the United States of America (“United States”) and the United Mexican States (“Mexico”) from El Paso, Texas, to the Gulf of Mexico.
3. The Rio Grande Project (“Project”) was constructed by the United States Reclamation Service and its successor agency the Bureau of Reclamation (“Reclamation”).
4. Elephant Butte Reservoir is the largest Project storage facility. Elephant Butte Dam is located near Truth or Consequences, New Mexico, approximately 105 river miles north of the Texas-New Mexico border.
5. Caballo Reservoir is a Project storage facility downstream of Elephant Butte Dam. Caballo Dam is located approximately sixteen miles south of Truth or Consequences, New Mexico.
6. In 1906, the United States and Mexico entered into the Convention between the United States and Mexico for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes (“1906 Convention”).
7. In the 1906 Convention, the United States agreed to deliver 60,000 acre-feet of water to Mexico, subject to adjustment in case of extraordinary drought or serious accident to the irrigation system in the United States.
8. On June 27, 1906, the United States entered into a contract with the Elephant Butte Water Users’ Association, in New Mexico, and the El Paso Valley Water Users’ Association, in Texas, to provide for, among other things, repayment of Project construction costs.
9. Elephant Butte Irrigation District (“EBID”) and El Paso County Water Improvement District No. 1 (“EPCWID”) were formed in 1918 and 1917, respectively, to assume the assets and obligations of the predecessor water user associations.

10. EBID and EPCWID entered into separate contracts with the United States governing, among other things, repayment of Project construction costs.
11. EBID is located entirely within the State of New Mexico.
12. EPCWID is located entirely within the State of Texas.
13. The Reclamation Service, Reclamation's predecessor agency, began delivering water to Project beneficiaries in 1908 and began delivering water to Project beneficiaries from Project storage in Elephant Butte Reservoir in 1915, before construction was complete.
14. Construction of Elephant Butte Dam and the major Project diversion works was completed by 1919. Caballo Dam was constructed between 1936 and 1938.
15. In 1922, Reclamation reported that the "determined irrigable area" of the Project in the United States was 155,000 acres.
16. In 1923, Colorado and New Mexico each appointed a commissioner to negotiate an interstate compact to address development of the Rio Grande upstream of Elephant Butte Reservoir.
17. A Compact commissioner for Texas was appointed in 1926.
18. Colorado, New Mexico, and Texas agreed to a temporary compact in February 1929.
19. In 1935, officials from the federal National Resources Committee presented to the Rio Grande Compact Committee a proposal for a comprehensive study of the Rio Grande from its headwaters to Fort Quitman, Texas.
20. The National Resources Committee conducted the study, known as the "Rio Grande Joint Investigation," in 1936 and 1937.

21. In February 1938, the National Resources Committee published its report, entitled “The Rio Grande Joint Investigation in the Upper Rio Grande Basin in Colorado, New Mexico, and Texas” (“Joint Investigation Report,” or “JIR”).
22. On March 18, 1938, the members of the Rio Grande Compact Commission each executed the final Rio Grande Compact on behalf of their respective states. After each state legislature ratified the Compact, Congress gave its approval to the Compact on May 31, 1939.
23. Article III of the Compact requires Colorado to deliver water according to a specific schedule at Lobatos, Colorado, which is near the Colorado-New Mexico state line.
24. Article IV of the Compact requires New Mexico to deliver water according to a specific schedule at San Marcial, a location on the Rio Grande upstream of Elephant Butte Reservoir.
25. In 1948, the Rio Grande Compact Commission passed a resolution to make Elephant Butte Reservoir the measuring point for New Mexico’s Article IV delivery obligation as described in Stipulated Fact No. 24.
26. At the time the Rio Grande Compact was executed, 88,000 acres authorized to receive water from the Project were situated within EBID, and 67,000 acres authorized to receive water from the Project were situated within EPCWID. Thus, as of 1938, approximately 57% of the authorized Project acres were located in New Mexico, and 43% of the authorized Project acres were located in Texas. Pursuant to a 1938 contract between the two districts, and signed by the Assistant Secretary of the Interior, each district could increase its authorized acreage by 3 percent.
27. In 1938, the Project acreage irrigated and under cultivation was less than the total authorized acreage.
28. Until about 1979, Reclamation delivered Project water to individual New Mexico and Texas farm headgates in response to farm orders.
29. In 1979 and 1980, Reclamation signed contracts with EBID and EPCWID, respectively, to transfer operation and maintenance responsibility for certain Project facilities to each district.

30. Following the transfer of operation and maintenance responsibilities to the districts, Reclamation has allocated water to each district for delivery at its respective canal headings and other diversion points.
31. EBID and EPCWID distribute the water delivered by Reclamation among the water users within their respective districts.
32. The districts report the amount diverted at each diversion point to Reclamation.
33. After 1979, Reclamation proposed a method for allocating water for delivery to EBID and EPCWID diversion points and delivery to Mexico based on regression equations known as the “D1” and “D2” curves.
34. In 2008, Reclamation, EPCWID, and EBID executed an operating agreement for the Project, known as the “2008 Operating Agreement.”
35. The irrigated lands of the Hudspeth County Conservation & Reclamation District No.1 are situated upstream of Fort Quitman, Texas, within the Rio Grande Basin as defined by Article I(c) of the Rio Grande Compact.
36. Hudspeth County Conservation & Reclamation District No.1 may not order from the Project any water for delivery.

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STATE OF NEW MEXICO'S CERTIFICATE OF SERVICE

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This is to certify that on October 3, 2021, I caused a true and correct copy of the **Joint Submission of Stipulated Facts** to be served by e-mail and U.S. Mail upon the Special Master and by e-mail upon all counsel of record and interested parties on the Service List, attached hereto.

Respectfully submitted this 3rd day of October, 2021.

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